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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,487	06/06/2001	Tracy L. Francis	5127	7168
25280	7590	11/14/2007	EXAMINER	
Legal Department (M-495) P.O. Box 1926 Spartanburg, SC 29304			CASLER, TRACI	
		ART UNIT	PAPER NUMBER	
		3629		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/875,487	FRANCIS ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Traci L. Casler	3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 March 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 15-33 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 15-33 is/are rejected.
- 7) Claim(s) 26 and 31-33 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

This action is in response to papers filed March 03, 2006

Claims 15-33 are pending.

Claims 15-33 are rejected

### ***Claim Objections***

Claims 26, 31-33 are objected to because of the following informalities: The objected claims for dependent classes switching statutory subject matter. A dependent claim that is in a different statutory class than its independent claim is not automatically improper. To test if any claim is a proper dependent claim, use the "infringement test" in MPEP 608.01(n), Section III. If a claim is a **proper dependent** claim, it **cannot conceivably be infringed by anything that would not also infringe the claim it references**. Another way to think of it is - if you can infringe the dependent claim without infringing the independent claim, then the dependent claim is an improper dependent claim because it does not require all the limitations of the independent claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 15 recites the limitation "the website" in L8-9 There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 15-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication 2002/0002482 A1; Thomas. Method and Apparatus for Performing Surveys Electronically over a Network; hereinafter referred to as Thomas; in view of US Patent Publication 20020004749 A1 Froseth, et al; Customized Food Selection Ordering and Distribution System and Method.

4. As to claims 22 and 27 A method of evaluating the potential market acceptance of one or more floor covering designs with the assistance of pre-qualified associates, the method comprising:

providing an interactive web site for the communication and receipt of data via the

nternet; electronically communicating to a multiplicity of pre-qualified associates web documents illustrating one or more floor covering designs in combination with a standardized rating scale **Thomas teaches a method for providing an electronic form survey(polls, and opinions) to a plurality of register participants(PG. 1 13).** **Thomas further teaches the survey including graphical images video clips etc.**

5. Comprising a plurality of selectable responses Indicating varying levels of likelihood of use of said one or more floor covering designs **Thomas survey format allows several forms i.e., true/false, good better best, (Pg. 5 ¶ 59).**

Thomas fails to teach a shopping cart accessible from the initial communication that allows the user to place and order wherein at least a portion of said web documents further include links from the web documents as initially communicated to associates to an interactive electronic shopping cart accessible by said associates for ordering physical samples and/or products incorporating designs as displayed on the web documents, such that the shopping cart is accessible directly from said web documents independent of selecting any given response menu item; Thomas fails to teach a shopping cart accessible from the initial communication that allows the user to place and order without taking a survey. **Froseth teaches a customer taking both a food preference survey (if they prefer it they will likely use it) (Pg. 6 ¶ 81) and scoring or rating a product on how well it was like(Pg. 26 ¶ 270). Froseth additionally allows the user to bi-pass the surveys and order (Pg. 11-12 ¶ 131). It would have been obvious to one skilled in the art at the time of invention to combine Froseth with Thomas so as to allow a user to directly purchase an already known or preferred product and not require or need to seek advice or recommendation.**

Electronically receiving from at least a portion of said associates responses indicating the likelihood of use of said one or more floor covering designs and/or orders placed; and **Thomas teaches electronically receiving at least a portion of the likelihood of use.(Pg. 4 ¶ 53)**

Tabulating and archiving the selected responses received from said associates, wherein the electronically communicating and electronically receiving steps are conducted through said interactive web site. **Thomas teaches tabulating and storing results(Pg. 4 ¶ 52).**

6. Although Thomas and/or Froseth do not teach the products being survey specifically as floor covering designs it would have been obvious to one of ordinary skill in the art at the time of invention to combine Floor coverings with Thomas and Froseth so as to be utilized in which every industry and/or product an organization is marketing or researching with the same outcome/results.

7. As to claim 15 **Thomas teaches a system comprising a computer interactive communications for ballot style rating(Pg 1 ¶ 10-11) Thomas survey format allows several forms i.e., true/false, good better best, (Pg. 5 ¶ 59). A plurality of selected responses. Thomas teaches electronically receiving at least a portion of the likelihood of use.(Pg. 4 ¶ 53)**

8. Thomas fails to teach a shopping cart accessible from the initial communication that allows the user to place and order wherein at least a portion of said web documents further include links from the web documents as initially communicated to associates to an interactive electronic shopping cart accessible by said associates for ordering physical samples and/or products incorporating designs as displayed on the web

documents, such that the shopping cart is accessible directly from said web documents independent of selecting any given response menu item; Thomas fails to teach a shopping cart accessible from the initial communication that allows the user to place and order without taking a survey. **Froseth teaches a customer taking both a food preference survey (if they prefer it they will likely use it) (Pg. 6 ¶ 81) and scoring or rating a product on how well it was like(Pg. 26 ¶ 270). Froseth additionally allows the user to bi-pass the surveys and order a (Pg. 11-12 ¶ 131).** It would have been obvious to one skilled in the art at the time of invention to combine Froseth with Thomas so as to allow a user to directly purchase an already known or preferred product and not require or need to seek advice or recommendation.

9. As for the limitations of the functions of the **system/apparatus** or what the **system/apparatus** does, "these carry no patentable weight in a system/apparatus claim. System/Apparatus claims should cover what a device is or structures or structural elements, not what a device does. See *Hewlett-Packard Co. vs. Bausch & Lomb Inc.*, 909 F 2.d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

10. As to claim 16 Thomas teaches a method of tabulating and storing responses.(Pg. 3 ¶37).

11. As to claims 17 and 23 Thomas teaches selecting participants from a group(Pg. 4 ¶ 0047). It would have been obvious to one of ordinary skill in the art to select participants working in the field in which a company sells their products. Although Thomas doesn't explicitly teach the participants being within the architectural and design communities these differences are only found in the nonfunctional descriptive

material and are not functionally involved in the steps recited. The steps would be performed regardless of the participants selected. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 44(Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ 2d 1031(Fed. Cir. 1994). The specific “subscribers” are how the applicant intends to use the invention.

12. As to claims 18-19 and 24 Thomas teaches an email notification of an available survey to participants.(Pg. 5 ¶ 0062).

13. As to claims 20-21 and 25-26 Thomas teaches printable web documents with embedded code(Pg. 1 ¶ 7).

14. As to claims 28-29 and 31-32 Thomas teaches a survey system for products and market research and automatically (Pg. 6 ¶ 76). Thomas does not explicitly teach using the information for promoting products. However, it would have been obvious to one skilled in the art at the time of invention that the use companies used information gained from surveys to determine how and what is going to be sold to their consumers. As to applicants limitations of “so as to permit...” this is intended use and is not considered patentable subject matter.

15. As to claim 30 and 33 Thomas teaches a surveying tool however, Thomas fails to teach viewing the products in several different designs before purchase. The examiner notes all though Thomas or Froseth do not explicitly teach the products described in the claim these product are intended use of the invention. It would have been obvious to one of ordinary skill in the art to combine the teaches and incorporate

the specific type of products the company sells in order to gain valuable consumer product information.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traci L. Casler whose telephone number is 571-272-6809. The examiner can normally be reached on Monday-Thursday 6:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TLC  
*Traci Casler*  
AUG 30 2009

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